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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2023:PHHC:166559

CWP-12662-2020

DECIDED ON:19.07.2023

OM PRAKASH

.....PETITIONER

VERSUS

MANAGING DIRECTOR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Thakan, Advocate
for the petitioner.

Mr. R.S. Longia, Advocate
for the respondents.

SANDEEP MOUDGIL (J)

1. The jurisdiction of this court has been invoked under Article 226/227 of Constitution of India for issuance of writ in the nature of Certiorari for quashing of impugned order dated 29.09.2017 (Annexure P-6) and further directing the respondents to grant 3rd A.C.P scale after the completion of twenty four years of service.

2. The petitioner was appointed on the post of Store Munshi on the basis of work charge in the respondent department where he was regularised on 01.01.1988. After the completion of 10 years of service, he was granted 1st A.C.P and on completion of 20 years of service, he was granted 2nd A.C.P w.e.f 01.01.2008. After his completion of 24 years of service, his 3rd A.C.P was due to be granted w.e.f 04.03.2014.

3. The counsel for the petitioner contends that the petitioner moved the representation for the grant of 3rd A.C.P on 31.12.2015 (on his superannuation) to the Executive Engineer T.S Division,HVPNL, Rohtak (Annexure P-2). To further contend, the counsel states that despite giving various oral and written representations, the respondent did not pay any heed to it and on 19.06.2017, the Executive Engineer TS Divisional Rohtak wrote letter to the Superintendent Engineer TS Circle Rohtak to grant the petitioner 3rd A.C.P which was further recommended by the Superintendent Engineer Rohtak to Superintendent Engineer Adm-II, HVPNL PANCHKULA on 11.07.2017 which was rejected by passing a non-speaking order dated 29.09.2017(Annexure P-4 & P-5 & P-6 respectively).

4. The counsel for the petitioner states that the respondent cannot go beyond the A.C.P pay rules 1988(amended in 2014) and vide letter of Executive Engineer dated 09.11.2017 petitioner being a store munshi is not required to pass account exams for the 3rd ACP.(Annexure P-7). Reliance has also been placed upon the letter of Chief Accounts Officer, HVPNL,PANCHKULA dated 15.03.2000 whereby it is clearly stated that the store munsis are not required to pass the account exam. (Annexure P-9).

5. He further submits that the petitioner has earlier filed a writ petition which was withdrawn with a liberty to file a fresh one and in the light of CWP NO. 21630 of 2010 titled as Jai Kanwar versus State Of Haryana , the counsel for the petitioner submits that his case is covered by the said judgment.

6. On the other hand, the counsel for the respondent strenuously

argues that the writ is hit by delay and laches, hence prima facie it should not be maintainable. The petitioner has no sound reasons to support his inordinate delay in filing the said writ petition with a delay of 4 years and 8 months after his retirement. The counsel for the respondent contends that the claims of grant of increments, ACPs, Promotion etc has to be made during service and not after retirement.

7. In support of his arguments, the counsel for respondent submits that for the grant of 3rd ACP, the employee should be eligible for promotion to the next higher post in hierarchy and in present case the petitioner was holding the post of Store Munsif which is equal to the post of Store Assistant and the next higher post in hierarchy was the post of store keeper for which the passing of paper -V was a pre-requisite condition. HE mentions the Rules/Policy framed by HVPNL vide office order dated 15.07.2008, specifically the definition 2.(a) which clearly states that assistant store keepers and Store keepers is covered under the staff following in Ministerial Establishment and is required to pass the Departmental Accounts Examination i.e paper-V.

8. The counsel for the respondent vehemently argues while relying upon State of Haryana and others vs Sita Ram and others 2009 wherein the apex court has held that the work charge services cannot be considered as a qualifying regular satisfactory service for the grant of ACP scales, therefore the respondent vide order dated 02.05.2013 has withdrawn the 1st and 2nd ACP of the petitioner which was challenged by the petitioner and the same was rejected vide order dated 18.05.2015(Annexure R-1 & R-2 respectively).

Furthermore, the petitioner has misled the hon'ble court by referring to the letter dated 15.03.2000 of Chief Accounts Officer which is applicable for confirmation on the post of store munsif and not for becoming eligible for promotion.

9. Heard both the counsels.

10. The present writ petition has been filed by the petitioner after a delay of 4 years and 8 months after his superannuation for the grant of 3rd ACP, which is an increment to be encashed during the tenure of service and not after the retirement. Moreso, the petitioner allegedly was entitled for the 3rd ACP w.e.f 01.01.2012 and he retired on 31.12.2015 meaning thereby, that he, for 4 years was sleeping over his rights and the law does not permit one to sleep and rise like a phoenix. This court has relied upon the judgment of ***Tarseem Pal vs Punjab State Power Corporation Limited and others, 2013(3) SLR 314***. In the case of Tarseem Pal(supra), the petitioner was serving as a clerk with the respondent-Corporation and had retired on 31.03.2005. Claim in the writ petition was to grant him the benefit of proficiency set up in the pay scale on completion of 23 years of service from the due date as per policy of the Corporation. During the service career, he had not agitated the claim for increments. For the first time, such claim had been made on 28.02.2005 i.e just one month prior to superannuation. While non suiting the petitioner on account of delay and laches it was held as follows:-

"11. In the aforesaid judgments, it has been clearly laid down that discretionary relief in a writ jurisdiction is available to a party who is alive of his rights and enforces the same in court within reasonable time. The judgment in another case does not give Q

cause of action to file a writ petition at a belated stage seeking the same relief. Such petitions can be dismissed on account of delay and laches. As has already been noticed above in the present case as well, the petitioner joined service in the year 1965 and retired in the year 2005, but raised the issue regarding benefit of proficiency step up in the pay scale on completion of 23 years of service from the due date more than five years after his retirement referring to a judgment of this court and filed the petition claiming the same relief.

11. The petitioner retired from service on 31.3.2005 and the claim pertaining to the benefit of proficiency step up, which may be admissible to the petitioner during his service career, was sought to be raised more than five years after his retirement, the claim made at such a late stage deserves to be dismissed on account of delay and laches only. The petitioner could raise a grievance about the pay scales admissible to him or the last pay drawn by him within a reasonable time after his retirement. He cannot be permitted to raise the same at any time on the plea that the same is recurring cause of action.

12. Considering the enunciation of law, as referred to above, in my opinion, the petitioner herein is not entitled to the relief prayed for and the petition deserves to be dismissed merely on account of delay and laches.

(SANDEEP MOUDGIL)
JUDGE

19.07.2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No